

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE: :
 :
PROCEDURES TO GOVERN MEDIATION :
OF APPEALS FROM THE UNITED STATES :
BANKRUPTCY COURT FOR THIS :
DISTRICT :
 :

ORDER

WHEREAS, this Court entered an Order dated September 11, 2012 (“prior Order”), regarding procedures to govern mediation of all appeals from the United States Bankruptcy Court for the District of Delaware (“Bankruptcy Court”), pursuant to 28 U.S.C. § 158;

WHEREAS, the Judges of this Court have determined that, in order to more efficiently and expeditiously administer justice and to conform the prior Order to the Court’s current procedures with regard to such appeals, it is appropriate and necessary to modify the prior Order;

NOW THEREFORE, this 19th day of July, 2023, it is hereby ordered that the following mandatory mediation procedures shall apply to all appeals to this Court from the Bankruptcy Court:

1. Referral for Mediation to United States Magistrate Judges

All bankruptcy appeals shall be referred to a United States Magistrate Judge (“Magistrate Judge”) for initial review and for discussion with counsel or the parties, if necessary, to determine the appropriateness of mediation for the case, pursuant to 28 U.S.C § 636(b).

If a Magistrate Judge determines that mediation is appropriate, the Magistrate Judge shall issue an order retaining the matter for mediation. All briefing in connection with the appeal and all motion practice regarding the appeal shall be deferred during the pendency of mediation unless the Court determines otherwise. A referral to mediation, however, shall not defer or extend the time for ordering any necessary transcripts.

If mediation is determined not to be appropriate by the Magistrate Judge, the Magistrate Judge will issue an order recommending that the matter be withdrawn from mediation, so that the case can proceed through the appellate process.

2. Mediation Before the Magistrate Judge

Mediation before the Magistrate Judge will proceed in the usual manner as does mediation for other matters occurring in this Court. In addition to any other materials requested by the Magistrate Judge, joint exhibits for the mediation statements shall include any judgment or order on appeal and any opinion or memorandum issued by the Bankruptcy Court. At the conclusion of the mediation process, if settlement is not reached, the Magistrate Judge will issue an order recommending the matter be withdrawn from mediation, so that the case can proceed through the appellate process.

3. Referral of Pending Appeals to Mediation


At any time during an appeal pending as of the date of this Order, the assigned Judge may refer the appeal for mediation. The procedures set forth herein are applicable to matters referred for mediation under this paragraph.

4. Confidentiality of Mediation Proceedings

The mediator shall not disclose to anyone statements made or information developed during the mediation process. Unless otherwise permitted by the Court, the attorneys and other persons attending the mediation are likewise prohibited from disclosing statements made or information developed during the mediation process to anyone other than clients, principals or co-counsel, and then, only upon receiving due assurances that the recipients will honor the confidentiality of the information. Similarly, the parties are prohibited from using any information obtained as a result of the mediation process as a basis for any motion or argument to any court. The mediation proceedings shall be considered compromise negotiations under Rule 408 of the Federal Rules of Evidence. Notwithstanding the foregoing, the bare fact that a settlement has been reached as a result of mediation shall not be considered confidential.

5. Settlement

No party shall be bound by statements or actions at a mediation session unless a settlement is reached. If a settlement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to the agreement, and counsel shall file a stipulation of dismissal of the appeal. Such a stipulation must be filed within thirty (30) days after settlement is reached, absent further Court order.



Colm F. Connolly
Chief Judge